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ABSTRACT

This pamphlet addresses the issue of sexual harassment as it relates to students at postsecondary education institutions. It presents information concerning Title IX 1972 Education Amendments, and concerning: (1) an institution's legal responsibility to respond to allegations of sexual harassment; (2) actions available to a student experiencing sexual harassment; (3) the workings of the grievance process; (4) how a student files an Office for Civil Rights complaint; (5) reasons why a student should file such a complaint; and (6) the best way for an institution to deal with sexual harassment. Suggested considerations when developing an institution's sexual harassment grievance procedure are provided. A list is also provided of the U.S. Department of Education, Office for Civil Rights regional offices throughout the country. (MAH)

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SEXUAL HARASSMENT: IT'S NOT ACADEMIC

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U.S. Department of Education
Office for Civil Rights
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Revision

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I was discussing my work in a public setting when a professor cut me off and asked if I had freckles all over my body.[1]

SEXUAL HARASSMENT: IT'S NOT ACADEMIC

Sexual harassment of students is a *real* and increasingly visible problem of serious consequence in higher education. A sexual harassment experience can affect all aspects of a student's life: it can threaten a student's emotional well being, impair academic progress and even inhibit the attainment of career goals.

Most sexual harassment incidents involve a male harasser and a female victim, although there have been several reported cases involving female harassers and male victims as well as same-sex harassment. Other forms of discrimination, such as that based on race, may be combined with an incident of sexual harassment and further compound the severity of its effect and the difficulty of its resolution. Whatever the circumstances, academic institutions must address the problem in order to ensure all students a just and equal learning opportunity.

TITLE IX AND SEXUAL HARASSMENT

Sexual harassment in educational institutions is not simply inappropriate behavior, it is against the law. Sexual harassment of students is a violation of Title IX of the 1972 Education Amendments in that it constitutes differential treatment on the basis of sex. Title IX applies to any educational program or activity which receives Federal funds and protects both employees and students.*

The law states:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

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*Although sexual harassment against employees is contrary to Title IX, this pamphlet addresses only the issue of sexual harassment as it relates to students.

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In an August 1981 policy memorandum, the Office for Civil Rights (OCR) of the U.S. Department of Education reaffirmed its jurisdiction over sexual harassment complaints under Title IX and adopted the following working definition:

> Sexual harassment consists of verbal or physical conduct of a sexual nature, imposed on the basis of sex, by an employee or agent of a recipient that denies, limits, provides different, or conditions the provision of aid, benefits, services or treatment protected under Title IX.[2]

> I see male colleagues and professors chum it up and hear all the talk about making the old boy network operate for women, so I thought nothing of accepting an invitation from a . . . professor to attend a gathering at his house. Other graduate students were present. . . . The professor made a fool out of himself pursuing me (it took me awhile to catch on) and then blurted, "You know I want to sleep with you; I have a great deal of influence. Now, of course I don't want to force you into anything, but I'm sure you're going to be sensible about this." I fled.[3]

QUESTIONS AND ANSWERS ABOUT SEXUAL HARASSMENT OF STUDENTS

Question: What is an institution's legal responsibility to respond to allegations of sexual harassment?

Answer: The responsibility is the same as it would be for any other sex discrimination complaint filed under Title IX. An institution can either utilize its general grievance procedure, required by Section 106.8 of the Title IX regulation, or develop and implement special procedures for handling sexual harassment allegations. Given the especially sensitive nature of this form of sex discrimination, some institutions have opted for the latter course of action and/or have instituted specific training in handling these cases. Title IX requires that grievance procedures be prompt and equitable.

> He (the teaching assistant) kept saying, don't worry about the grade, you know we'll settle everything out of class.[4]

Question: What can a student who is confronted by sexual harassment do?

Answer: There are many courses of action that a student can take in response to a sexual harassment experience. They include seeking advice informally, requesting third-party intervention, filing a formal complaint. For example, a student can do one or more of the following:

- Tell the harasser (in person or by letter and when it is reasonably certain that such action will not jeopardize the student's personal safety, academic status or professional future) that the behavior is neither humorous nor welcome and should cease immediately.

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- Seek support from a friend, colleague or counselor.
- Keep a written record, documenting, as precisely as possible, what happened, when it took place, the names of witnesses, if any, the student's response, and any other information that may be helpful later.[5]
- Find out whether other students and/or employees have also been harassed and whether they could offer corroborating testimony.
- Seek advice on how to deal with the situation from a supportive and knowledgeable person.
- Find out what the campus grievance process is and discuss the options with an advisor and/or friend.
- File a complaint with the institution and/or with the Office for Civil Rights.

> The financial officer made it clear that I could get the money I needed if I slept with him.[6]

Question: How does the grievance process work?

Answer: There are many types of grievance procedures. Thus, it is difficult to describe the specific steps that would occur if a student decided to take action following a sexual harassment experience.

An exemplary procedure would provide the student with a variety of sources of initial, confidential and informal consultation concerning the incident(s), without committing the individual to the formal act of filing a complaint with its required subsequent investigation and resolution. Following informal consultation, a student could then decide whether to:

- do nothing (rarely recommended);
- take personal action (such as a letter to the harasser);
- request informal third-party mediation; or
- file a grievance which initiates formal investigation and resolution of a complaint.

Title IX mandates that all such complaints be investigated and resolved in a "prompt and equitable" manner. In some procedures, a single individual conducts the investigation; in others, it is accomplished by committee.

Investigating sexual harassment complaints often requires inquiries into interpersonal relations and may also involve professional ethics, behavior and judgment. Awareness of and sensitivity to the potentially negative effect on the lives and careers of both parties involved is of great importance in handling an investigation. Where there is evidence to substantiate a charge of sexual harassment, the institution must take immediate action to stop and prevent further harassment, as well as initiate appropriate remedial measures.

> They (the professors) should realize that they have a position of authority over you, and that's going to influence the way you think about them.[7]

Question: How does a student file an OCR complaint?

Answer: The OCR complaint procedure is initiated by a letter to the OCR regional office serving the Department of Education administrative region where the college or university is located. (Regional OCR addresses begin on Page 9.) The letter should include the name, address and daytime telephone number of the student, and provide the date(s) of, and sufficient information about, the alleged incident(s) so that OCR can understand the nature of the complaint.

The complaint should be filed within 180 days from the last date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

One reason for extending the time for filing is if a student uses a postsecondary educational institution's internal grievance procedure, and then desires to file with OCR, such complaints must be filed within 60 days after the completion of an internal grievance procedure. Where OCR has jurisdiction, its investigation is limited to those allegations in the internal grievance procedure.

As a policy, OCR does not reveal the names or other identifying information about an individual unless it is necessary for the completion of an investigation or for enforcement activities against an institution that violates the law. OCR keeps the identity of complainants confidential except to the extent necessary to carry out the purposes of the civil rights laws, or unless disclosure is required under the Freedom of Information Act, the Privacy Act or otherwise required by law.

Question: Why should a student report a sexual harassment experience?

Answer: The impact of sexual harassment on a student's educational progress and/or attainment of future goals can be significant and should not be underestimated. As a result of a sexual harassment experience, a student may, for example:

- receive an undeserved grade in a critical course;
- have to seek a new academic advisor;
- find it necessary to choose a new thesis topic;
- drop out of a chosen field of study;
- transfer to another college or university;
- be unable to obtain customary job referrals and references; and
- experience adverse emotional effects.

Harassing behavior, if ignored or not reported, is likely to continue and become worse rather than "go away." In addition, unless a sexual harassment experience is reported, the institution cannot take remedial action.

> Playboy centerfolds were used as Anatomy teaching slides. . . . In slides, lectures, teaching aids and even our own student note services, we found that nurses were presented as sexy, bitchy or bossy but never as professional health care workers.[8]

Question: What is the best way for an institution to deal with sexual harassment?

Answer: The Title IX regulation requires institutions to adopt and publish grievance procedures that provide for the prompt and equitable resolution of sex discrimination complaints. To comply with the requirement, an institution must:

- ensure that its Title IX grievance procedure is suitable and adequate for dealing with sexual harassment complaints; and
- ensure that the grievance procedure is publicized and accessible to the entire academic community.

In addition to responding to incidents that have already occurred, steps could be taken to prevent sexual harassment. To help prevent sexual harassment, an institution could:

- issue and disseminate an explicit statement which affirms its position that sexual harassment is a violation of institutional policy and will not be tolerated;
- develop and adopt a working definition that identifies conduct that would be considered harassment; and
- develop methods to inform new administrators, faculty and students of the institution's sexual harassment policy and grievance procedures.

In the final analysis, adoption of strong preventive measures is the best way to confront sexual harassment. Additionally, the Supreme Court has affirmed the right of an individual to pursue private legal action under Title IX. In the event of a lawsuit, previously instituted preventive measures may also serve to reduce institutional liability resulting from acts of sexual harassment.

> The students have to know that if they decide to take some course of action, it's not going to be wasted time. . . . If you take the risk to make a complaint, it's going to listened to. . . taken seriously and we (the institution) are going to follow through on it. . . and be very serious about it.[9]

CONSIDERATIONS WHEN DEVELOPING AN INSTITUTION'S SEXUAL HARASSMENT GRIEVANCE PROCEDURE

The Title IX regulation requires institutions to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints. Institutions may find the following questions helpful when developing a sexual harassment grievance procedures.

- Is the grievance procedure flexible enough to accommodate the wide range of incidents of sexual harassment?
- Is the grievance procedure coordinated with other institutional grievance procedure systems?
- Can a student be accompanied by a friend or advisor throughout the complaint process?
- Does the grievance procedure provide an opportunity for informal consultation and, where appropriate, informal resolution before moving into formal procedures?

- After initial contact in the grievance procedure, does the complainant have:
  - control over whether or not further institutional action will be taken; and
  - an opportunity to participate in decision-making regarding the method for resolving the matter?
- Is the grievance procedure process credible to the constituency it is designed to serve?
- Are persons of authority, credibility and sensitivity involved in the grievance procedure process?
- Does the grievance procedure adhere to the Title IX regulations?
- Does the grievance procedure provide for independent and impartial investigation which produces persuasive findings based on:
  - through fact finding;
  - careful review; and
  - opportunity for appeal?
- Is every effort made to protect the confidentiality of the parties?
- Is the opportunity for reprisal and retaliation minimized?
- Does the grievance procedure provide prompt and equitable resolution of the complaint?
- Are there time frames in the grievance procedure by which a complaint should be investigated and resolved?
- Is a thorough yet timely remedy possible within the established timetable?
- Does the grievance procedure include appropriate remedy for the complainant and institutional corrective action where there is a finding of sexual harassment?
- Does the grievance procedure include provisions for quality control, tracking, record keeping and data retrieval?

> I think we need to get away from the issue of getting caught. We need to get to the issue of how to stop (sexual harassment) from happening.[10]

Footnotes

1. Cited in Women Student's Coalition (WSC), *The Quality of Women's Education at Harvard University: A Survey of Sex Discrimination in the Graduate and Professional Schools Report, Harvard Univ.*, June 1980, p. 10.

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2. OCR policy Memorandum, August 31, 1981, from Antonio J. Califa, Director for Litigation, Enforcement and Policy Service, OCR to Regional Civil Rights Directors.

3. Frank J. Till, *Sexual Harassment: A Report on the Sexual Harassment of Students*, National Advisory Council on Women's Educational Programs, 1980, p. 18.

4. L. Miranda and Associates, Inc. (LM&A), personal interview with female undergraduate student, 1981.

5. Adapted from "Policy Statement on Sexual Harassment," Northeastern Illinois University, 1981, p. 3.

6. LM&A, op. cit., female undergraduate student, 1981.

7. Ibid, male undergraduate student, 1981.

8. P. Franklin, H. Mogling, P. Zatlin-Boring, R. Angress, "Sexual and General Harassment in the Academy: A Guide for Faculty, Students and Administrators," the Modern Language Association of America, 1981, p. 22.

9. LM&A, op. cit., male undergraduate student, 1981.

10. Ibid, professor of political science, 1981.

FOR INFORMATION AND/OR MATERIALS ON SEXUAL HARASSMENT CONTACT:

REGION I
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

U.S. Department of Education
Office for Civil Rights, Region I
J.W. McCormack Post Office & Courthouse
Room 222
Boston, Massachusetts 02109-4557
(617) 223-9662; TDD (617) 223-9695

REGION II
New Jersey, New York, Puerto Rico, Virgin Islands

U.S. Department of Education
Office for Civil Rights, Region II
26 Federal Plaza
33rd Floor, Room 33-130
New York, New York 10278-0082
(212) 264-4633; TDD (212) 264-9464

REGION III
Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

U.S. Department of Education
Office for Civil Rights, Region III
3535 Market Street, Room 6300
Philadelphia, Pennsylvania 19104-3326
(215) 596-6787; TDD (215) 596-6794

REGION IV
Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee

U.S. Department of Education
Office for Civil Rights, Region IV
101 Marietta Tower, 27th Fl., Suite 2702
Atlanta, Georgia 30301-2048
(404) 331-2954; TDD (404) 331-7236

REGION V
Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

U.S. Department of Education
Office for Civil Rights, Region V
401 South State Street, Room 700C
Chicago, Illinois 60605-1202
(312) 886-3456; TDD (312) 353-2540

REGION VI
Arkansas, Louisiana, Mississippi, Oklahoma, Texas

U.S. Department of Education
Office for Civil Rights, Region VI
1200 Main Tower Building, Suite 2260
Dallas, Texas 75202-9998
(214) 767-3959; TDD (214) 767-3639

REGION VII
Iowa, Kansas, Kentucky, Missouri, Nebraska

U.S. Department of Education
Office for Civil Rights, Region VII
10220 North Executive Hills Boulevard, 8th Floor
Kansas City, Missouri 64153-1367
(816) 891-8026; TDD (816) 374-6461

REGION VIII
Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, Wyoming

U.S. Department of Education
Office for Civil Rights, Region VIII
Federal Building
1244 Speer Boulevard, Suite 310
Denver, Colorado 80204-3582
(303) 844-5695; TDD (303) 844-3417

REGION IX
California

U.S. Department of Education
Office for Civil Rights, Region IX
Old Federal Building, Room 239
50 United Nations Plaza
San Francisco, California 94102-4102
(415) 556-7000; TDD (415) 556-6806

REGION X
Alaska, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, Trust Territory of the Pacific Islands

U.S. Department of Education
Office for Civil Rights, Region X
915 Second Avenue, Room 3310
Seattle, Washington 98174-1099
(206) 220-7880; TDD (206) 220-7907